87-1211

Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

AMANDA REID,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

I. Is the application of 18 U.S.C. 922 to Defendant herein an impermissible federal intrusion into a state's power, pursuant to the Tenth Amendment, to define residency?

II. Did the failure of the North Carolina Trial Court to hear and consider Defendant's motion to suppress evidence seized in a multi-district New York search upon which this Prosecution was based in its entirety, or to give effect to a previous New York District Court's rulings, deny to Defendant due process of law?

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The Middle District of North Carolina (Ward, J.) denied Amanda Reid's Motion to Suppress and to Dismiss the Indictment on June 19, 1985 (A-38-A-40).

The Middle District of North Carolina (Erwin, J.) entered Judgment of Conviction and Probation/Commitment Order on October 7, 1985. (A-34-A-37).

The Fourth Circuit Court of Appeals affirmed the District Court's judgment in an unpublished opinion of October 8, 1986. (A-1-A-33).

The Fourth Circuit Court of Appeals denied defendant's Petition for Rehearing on November 21, 1986. (A-41 -A-41a).

STATEMENT OF JURISDICTION

This is a petition for Certiorari to the United States Court of Appeals for the Fourth Circuit from an Order dated and entered October 8, 1986 (A-1) affirming Judgment and Probation/Commitment Order (A-34) based on a jury convicting Petitioner after trial before the United States District Court for the Middle District of North Carolina in Winston-Salem, Hon. Richard C. Erwin, presiding.

Petition for Rehearing appeal was denied by the United States Court of Appeals for the Fourth Circuit on November 21, 1986 (A-41).

The statutory provision believed to confer jurisdiction on this Court to review the decree in question by Writ of Certiorari is 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION:

Art. IV, Sec. 2, cl. 1

Amendment 2
Amendment 4
Amendment 5
Amendment 6
Amendment 10
Amendment 14

UNITED STATES STATUTES:

18 USC 921 (b)
18 USC 922 (a)(6)
18 USC 924 (a)
28 USC Sec. 1254 (1)

FEDERAL RULES OF CIVIL PROCEDURE

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STATEMENT OF THE CASE

Defendant AMANDA REID, ESQ., an attorney fully licensed to practice law in the States of California and New York, is a Senior Partner in the San Francisco law firm of Decious, Reid and Associates; and of counsel to the New York City Law Firm of Daniel P. Foster, P.C. Prior to the indictment (A-54-55) in this case, she had an unblemished personal and professional record.

Having maintained residences in both New York and California since late 1978, Miss Reid contemplated returning to the South in 1981 -- after almost 15 years' absence -- and settling there. To that end, she visited her aunt, with whom she had remained close, in May, 1981. Introduced to target practice by her uncle while she was there, she decided upon the

purchase of a Colt .45 semi-automatic pistol as her birthday gift from her parents, also present at the time.

She obtained a pistol permit from the local Sheriff in the presence of her aunt. When asked if she had North Carolina identification, she explained she had just recently arrived and had none, that she was considering staying and taking the North Carolina bar.

The Colt .45 was purchased from McHargue's Guns and Coins, Inc. in Winston-Salem, North Carolina on May 7, 1981. Miss Reid filled out the ATF 4473 form, listing her aunt's as her address, and presented an expired International Student ID card, with photograph, for identification and the pistol permit. She was again asked if she had North Carolina identification and against she truthfully answered

that she did not.

Shortly thereafter, her plans changed and she returned to New York to head a litigation team which was to take on a case receiving nationwide publicity -- the estate arising from the disappearance and death of the premier thoroughbred racing veterinarian in the country. Upon her return, she made application for admission to the New York bar, having already passed the examination. Given her change of plans, she did not list the North Carolina address as a temporary residence on that application, although she testified that she intended and believed North Carolina to be her residence at the time she was there. Also, with the change of plans, she relocated the Colt .45 to storage at her mother's in California, where it remained through the time of trial.

Four years later, Miss Reid was indicted for violation of 18 U.S.C. Secs. 922(a)(6) and 924 (A-54-55). The prosecution arose from a massive search of the offices of The Law Firm of Daniel P. Foster, P.C. a year earlier in which more than one-half million documents were seized. The sales receipt for purchase of the Colt .45 was one of those documents, seized from Miss Reid's personal effects. The charge against Miss Reid was the only one arising from the search, and the Government no labels its investigation "closed". Two weeks after the search, a year before Miss Reid's indictment, the law firm brought a $45-million Bivens action against all participating agents and responsible officials, which is still pending, all Government efforts to obtain dismissal and summary judgment having been rejected by the Court.

The Defendant's pre-trial motions were denied, with the exception of a Motion for Extension of Time in which to bring Motion to Suppress. Upon her suppression hearing, she was granted hearing limited only to the question of from which district the sales receipt was seized. She was found guilty at trial. Her Rule 29 motions were denied. She was sentenced on October 7, 1985 and filed Notice of Appeal on that date.

The Appeal was heard and decided by the Fourth Circuit Court of Appeals; Defendant's conviction was affirmed on October 8, 1986 (A 1-33a). A Petition for Rehearing was thereafter denied by the same Court. Defendant comes now before this Court by Petition for Writ of Certiorari pursuant to 28 U.S.C. Sec. 1254(1).

I. IS THE APPLICATION OF 18 U.S.C. 922 TO DEFENDANT HEREIN AN IMPERMISSIBLE INTRUSION INTO A STATE'S POWER PURSUANT TO THE TENTH AMENDMENT, TO DEFINE "RESIDENCY"?

Defendant AMANDA REID was charged and convicted of violating 18 U.S.C. 922 (a) in connection with the purchase of a firearm in the State of North Carolina. The prosecution and subsequent conviction of Ms. REID by a federal court represents a purely local transaction meeting none of the criteria for application of the federal statutes by the very language of the statutes themselves. Prior to her conviction, Defendant was duly qualified to purchase firearms in any number of states; she was within no category of persons of federal interest in prohibition from the purchase of firearms. At no time did the Government claim that REID engaged in any wrongful use or abuse of the firearm she purchased. To the extent that 18 U.S.C.

922(a)(6) permits a federal prosecution of Ms. REID, absent any allegation which would form the basis for federal interest in the matter, the statute is overbroad and unconstitutional as applied.

18 U.S.C. 922 makes it unlawful for any person knowingly to make any false or fictitious oral or written statement likely to deceive a dealer in connection with the lawfulness of a sale of firearms (A-50).

18 U.S.C. 921 contains the legislative history as well as the rationale for the enactment of the entire section and defines certain categories of persons disabled from firearms purchases; e.g., narcotics addicts, juveniles and mental defectives (A-47). Defendant, who until the time of this indictment, had an unblemished record as a law-abiding citizen and was a member of the bars of several states, was not among those whom the law sought to pro-

hibit from the purchase of a firearm.

921(9)(b) as originally enacted declared that it was not the purpose of the Title to place undue federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession or use of firearms appropriate to the purpose of hunting, target shooting or any other lawful activity.

In this case, Defendant purchased a handgun with the express permission of the Wilkesboro County Sheriff, from whom the Defendant had obtained a license in the company of her aunt. Ms. REID informed the Sheriff she did not have a North Carolina driver's license and presented the only picture identification she did have, an expired international student identification card. Ms. REID told the Sheriff that she intended to take the North Carolina bar examination at some future date but had not been in the

state long enough to obtain any North Carolina identification. On that basis, and without more, the Sheriff issued a gun permit. At no time did the State of North Carolina treat any part of the transaction as other than routine, nor was Defendant ever charged with violating any local or State laws.

The Constitution of the United States creates a Government of limited powers, United States Const. Amend. 10 (A-45); whose terms make clear that the Government is precluded from acting outside the bounds of powers expressly delegated to it, and that the States and People retain all rights and powers not so expressly delegated, examples of which are contained in the Bill of Rights.

The Fourteenth Amendment to the United States Constitution's equal protection command further defines the role of the

federal government in relation to the national rights of its citizenship in relation to local concerns of the States. The equal protection command is an aspect of the broader constitutional requirement that there must be a "rational connection" between legislative means and ends.

In the recent case of Piper v. New Hampshire, 53 L.W. 4328 (1985), this Court struck down state-imposed residency requirements for the practice of law, finding that they violated the Privileges and Immunities Clause of the Constitution of the United States (Article IV, Sec. 2, cl. 1) (A-42).

Derived from the Commerce Clause, the Privileges and Immunities Clause was intended to create a national economic union. Piper, supra.

> "One of the privileges which the clause guarantees to Citizen A is that of doing business in State B on terms of

> substantial equality with the citizens of that State."

Piper, supra, citing Toomer v. Witsell, 334 U.S. 385, 396 (1948).

The privileges and immunities covered by the clause are those which, by their nature, are fundamental. Canadian N. R. Co. v. Eggen, 252 U.S. 553 (1920); and protect persons, not states. Hogan v. Hartwell, 242 Ala. 646 (1942).

Although the "natural right" theory of the Privileges and Immunities Clause has been discarded, Corfield v. Coryell, 6 Fed. Cas. 546, sets forth federal rights currently protected by the clause, including the:

> "right of a citizen of one state to pass through another state for purposes of trade, agriculture, professional pursuits, or otherwise, to claim the benefit of the writ of habeas corpus, to institute and maintain actions of any kind in the courts of the state; to take, hold and

> dispose of property, either real or personal... ."

Id. at 552.

This Court, in Piper, concluded that there was no substantial reason for the different treatment of non-residents, and that the challenged discrimination bore no substantial relationship to the State's objective. Moreover, the practice of law was viewed not as a privilege under Article IV, Section 2, but as a fundamental right.

The doctrine of Piper, considered with the ramifications of the decision in the Court below, leave Ms. REID in the anomolous position of legal ability to take the bar examination and practice law in any state, including North Carolina, regardless of residency -- but forbidden in the State of North Carolina, by federal law, to purchase a firearm for her own protection.

In order to sustain the conviction, the Fourth Circuit Court of Appeals created a wholly artificial distinction from its previous ruling in United States v. Behenna, 552 F. 2d 573 (4th Cir. 1977). Although Ms. REID's indictment echoed Mr. Behenna's, the Court below found Mr. Behenna to be entitled to an instruction on his intent as to future residency rather than upon whether he had knowingly misrepresented his then present residence. Mr. Behenna had given his address to a South Carolina gun dealer as a vacant lot he had never owned although he testified that he intended to acquire a mobile home and put it in the vicinity. Behenna arrived in South Carolina three days before the purchase and left the state the same day.

The Court determined that Behenna's statement that he honestly believed himself to be a resident of the State of South

Carolina was a defense to the "secific charges" in the indictment and should have been submitted to the jury.

Ms. REID also requested a jury instruction on specific intent as to residence; the Court denied her request, finding Behenna to be "fact-specific" and inapposite here.

The right to bear arms is not a right granted by the Constitution; it predates the Constitution and is "not a right in any manner dependent on that document for its existence." United States v. Cruikshank, 92 U.S. 542, 551 (1875). The Second Amendment to the United States Constitution (A-42) declares that the right to bear arms shall not be infringed; but this means no more than that it shall not be infringed by Congress. The Amendment's effect is to restrict the powers of the national government, leaving the people

to look for their protection against any violation of the right by their fellow citizens to what is called in The City of New York v. Miln, 11 Pet. 139, the "powers which relate merely to municipal legislation, or what was, more properly, called internal police, not surrendered or restrained by the Constitution of the United States". United States v. Cruikshank, supra at 551.

The right to bear arms, therefore, is findamental and hsould be protected by the Privileges and Immunities Clause. This right is also considered fundamental within the State of North Carolina itself. Article I, Sec. 30, Constitution of North Carolina; State v. Dawson, 272 N.C. 635 (1968); and this extends to pistols. State v. Kerner, 181 N.C. 574 (1921).

Clearly, James Madison and his colleagues who were the original framers of

the Constitution, intended that the right to bear arms, like that of free speech or of the press, to be a guarantee for every individual citizen, whether or not he served as part of the militia. (The Armed Citizen in the arly Republic, Shalhope, R., 49 Law & Contemporary Problems, #1 at 136 (1986). See also, Patrick Henry, Proceedings of the Convention of Virginia, at 271, 2d ed., Richmond, 1805; The Federalist, #46.

> "(A) State has the same undeniable, and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation, when that jurisdiction is not surrendered or restrained by the Constitution of the United States. The burden of a state, therefore, is 'broadened' to advance the safety, happiness and prosperity of its people...". Presser v. Illinois, 116 U.S. 252 (1886).

The police power, under which states regulate and advance the safety, happiness and prosperity of its people is not a

power surrendered or restrained by the Constitution. It was under the police power that the Sheriff of Wilkes County exercised the power to issue a gun permit upon the information supplied by the Defendant. It was that power which allowed the Sheriff to make the determination as to residency and that Defendant met all local requirements for the purchase of a handgun. Sinnot v. Davenport, 63 U.S. 227 (1859); United States Const. Amend. 10; Kansas v. Colorado, 206 U.S. 46 (1907); Martin v. Hunter's Lessee, 14 U.S. 304 (1816).

Moreover, the State of North Carolina never objected to the purchase. Rather, the local Sheriff determined that Defendant had sufficient ties to the state to meet local requirements for a gun permit, under State law which requires a prospective purchaser to obtain a license in the county in which he or she resides (Criminal Law

Section 14-1402).

As expressly proclained in 18 U.S.C. Sec. 927:

> "no provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field of the law of any state on the same subject matter unless there is a direct and positive conflict between the provision and the law of the State so that the two cannot be reconciled or consistenly stand together."

This Chapter does not purport to define residency; that determination is left to the State, and in this case, the appropriate official of the State -- the local Sheriff -- determined that Ms. REID sufficiently met the State's residency requirement to purchase a pistol. This enactment makes it clear that the federal government intended to continue State and local policy to the greatest extent and for good Constitutional reason.

Ms. REID, a law-abiding citizen, purchased a handgun in Narth Carolina, with a permit to do so for a peaceful purpose. Her action went unchallenged for four years.

It cannot be argued that the purchase of a handgun for peaceful purposes involves a matter of state policy or acts of such a unique responsibility that it should be entrusted only to citizens of the State. In re Griffiths, 413 U.S. 717 (1973).

The conviction of Ms. REID in this case, representing as it does a federal challenge to a state's determination of application of its own residency laws, is antithetical to and violative of fundamental principles of federalism upon which our country was constituted. The federal encroachment upon state prerogatives of determination of residency should be declared unconstitutional and Ms. REID's conviction reversed.

II. THE FAILURE OF THE NORTH CAROLINA TRIAL COURT TO HEAR AND CONSIDER DEFENDANT'S MOTION TO SUPPRESS EVIDENCE SEIZED IN A MULTI-DISTRICT NEW YORK SEARCH UPON WHICH THIS PROSECUTION IS BASED IN ITS ENTIRETY, OR TO GIVE EFFECT TO PREVIOUS NEW YORK DISTRICT COURT RULINGS, DENIED TO DEFENDANT DUE PROCESS OF LAW.

Indisputably, this indictment and prosecution of Miss Reid derive wholly from the seizure of a sales receipt[1] in a search of a law firm's offices in the City of New York three years after her purchase of the weapon. (For the United States Attorney's concurrence, see A-65 - A-66.) Both the law firm's office, in the Southern District of New York, and its library office, in the

[1]The statements in the Court of Appeals decision that the ATF form was seized are in error. Only the sales receipt was seized. All other evidence in the case was a fruit of the seizure. (A-66)

Eastern District of New York, were searched. Miss Reid's standing to challenge the search, as a member of the law firm at that time -- and the owner of the property seized -- was readily established.

Miss Reid requested that the North Carolina court give effect to both the subsequent declaration of the U.S. District Judge who had signed the "warrant" in the Eastern District of New York (A-63) and the ruling of the Southern District of New York regarding the search and seizure in that district (A-10).

The trial court also declined to hear or consider evidence in support of Miss Reid's motion to suppress the sales receipt in the North Carolina court (which she was required to bring, or otherwise would have been deemed to have waived her rights under the Fourth Amendment, A-65 - A-66)), in which she set forth four

grounds: that the "warrants" were invalid as general warrants; that there was a lack of probable cause for the issuance of the "warrants"; that the seizure of the sales receipt was unlawful as outside the scope of the "warrants" and that the conduct of the search leading to the seizure was unlawful. See (A-26.) The trial court considered only Reid's claim that the magistrate lacked probably cause of the issuance of the "warrants" (A-28) and did not, even then, consider the basis of her claim of lack of probably cause (A-26 - A-28).

As a result, Miss Reid was denied her right to be heard as to the unlawfulness of the search and seizure upon which this prosecution was based.

The Government served forthwith grand jury subpoenas duces tucem on two of the members of the law firm on February 16, 1984. Those members appeared before the

Court that day and were ordered to return the following day, at 1:45 p.m. to lodge all claims of privilege as to subpoenaed materials with the Court. They agreed to do so. (See A-56 - A-57.)

Search "warrants" were procured that night from another judge of the Eastern District of New York and from a magistrate of the Southern District of New York, without informing them of the afternoon's proceedings and the firm members' promises to produce any materials sought by the subpoena in their possession.

Three weeks later, when the judge from whom the Eastern District of New York "warrants" were procured, the Honorable Henry Bramwell, was informed that the matter had been before another judge of the district upon issuance of subpoenas, that the subpoenas and the search warrants sought the same materials, that

the subpoenas and the search warrants sought the same materials, that the attorneys from the firm never had the opportunity to appear and produce any materials pursuant to the subpoena for the search had intervened, and the same Assistant U.S. Attorney and FBI agent who had been before the Cou-rt on the subpoena had also sought the search warrant from him without informing him of any of these facts, he stated on the record, "I'll be very frank with you. If I had known that you were before Judge Nickerson, under those circumstances, I doubt that I would have signed those search warrants. I doubt I would have signed them." (A-63 - A-64)

The trial court refused to give effect to this determination, treating it as though the judge simply did not want to get involved in another judge's case and refusing to give it substantive effect even though the misrepresentation to him by the same persons who were present before Judge Nickerson was

a direct and knowing misrepresentation. The trial court refused to evaluate Judge Bramwell's statement in light of the U.S. Attorney's ability to obtain the materials sought by court order upon the subpoena, the other unlawful aspects of the search and seizure, and the fact that it did not yield the materials sought by either subpoena or search warrant.[2]

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[2]The statements in the Court of Appeals decision that "Two grand jury subpoenas duces tecum were issued to Decious and Foster ordering them to return the next day with the same records and property later seized under the affidavit and search warrants. Decious and Foster then told Judge Nickerson that they had no such records," are wholly and completely incorrect and supported by no evidence on the record of this proceeding. The facts are that Decious and Foster promised to produce any materials in their possession sought by the "warrants" (A-56-A-57) and that the materials seized were not those sought by subpoena of "warrant".

In VonderAhe v. Howland, 508 F. 2d 364 (9th Circ., 1975), the court held a general warrant to be violative of the Fourth Amendment in circumstances in which, despite the defendants' previous cooperation in producing documents, the IRS sought a warrant.

> To proceed by the "warrant" method without first seeking the desired papers by request or subpoena should be based upon the strongest showing of necessity but if such drastic procedure is to be availed of, it should be strictly limited as constitutionally required. 508 F. 2d at 369 (Emphasis added.).

See also, United States v. Cardwell, 680 F. 2d 75, 78 (9th Circ., 1982). The "warrants", and search and seizure were not "strictly limited as constitutionally required," but the trial court refused to hear or take evidence on these points.

Judge Bramwell of the Eastern District of New York was aware of the effect of the Government's misrepresentation had on him when he issued the "warrant," and so stated

on the record. He was, at the time, however, precluded from ruling upon the law firm's F.R.Cr.P., Rule 41(e) motion on the Government's claim of an ongoing grand jury investigation, by the law of the Second Circuit as set forth in Standard Dry Wall, Inc. v. United States, 668 F. 2d 156 (2d Circ., 1982), cert den 456 U.S. 927 (1982). Therefore, he could go no further than he did, as it was not disclosed until a year later than the Government's claim of "on-going" grand jury investigation was a lie, and merely a pretense for holding the firm's files, evidence and records. However, the trial court refused to give substantive effect to his words that he had been misrepresented to and refused to permit defendant a hearing and remedy.

pursuant to Franks v. Delaware, 438 U.S. 154 (1978). Ironically, the means chosen by the trial court to refuse to give effect to Judge Bramwell's evaluation was that it would not overrule the determination of probable cause made by a fellow U.S. District Judge. However, Judge Bramwell as acting as a magistrate at the time and his determination was subject to trial court review. Illinois v. Gates, ___ U.S. ___, 103 S. Ct. 2317, 2332 (1983).

The "warrants" were virtually identical in the Southern and Eastern Districts of New York, and the Southern District also found itself bound by Standard Dry Wall, Inc. v. United States, supra. That November, the Honorable Morris E. Lasker, U.S.D.J. was no longer accepting of the government;s ruse of "grand jury investigation" and made the ruling set forth at A-10, upon the Government's representation that it had returned all documents seized

from the law firm's office in the Southern District of New York. This, too, was a misrepresentation.

The trial court herein avoided application of Judge Lasker's decision by holding that the sales receipt was not seized in the Southern District of New York. At the suppression hearing, the location of the seizure was the only question upon which the trial court would hear evidence.

The trial court erred in its refusal to apply Judge Lasker's ruling in two respects.

First, the finding that the sales receipt was seized in the Eastern District of New York was not supported by the evidence. Miss Reid remembered it among her personal effects in the firm's office in the Southern District of New York. She testified that the receipt

was in a file drawer in which she kept those effects, that no one else used or moved things from that drawer, and that she had last seen it in December of 1983. Mr. Rory McGahan, a clerk with the law firm, testified that he had inventoried all the materials the FBI claimed to have seized from the Eastern District of New York, document by document, and the sales receipt was not among them. The Government could produce no witness with personal knowledge of the location of seizure of the receipt, and no inventories listing them.[3]

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[3]The Court of Appeals decision erred in the "facts" it cited in affirming the trial court's finding that the seizure occurred in the Southern District of New York. FBI agent Herman could not assert to his personal knowledge the location of seizure; he was not present at either location, nor when the items were delivered to FBI headquarters. He did not inventory the items himself, but made a report off of the inventories of others, which did not include the sales receipt.

The Government has no inventory listing it as being seized. Although the FBI claimed that materials seized from different locations were not commingled, he was contracted by both Mr. McGahan and BATF agent David Communigs. Thus, the only clear evidence, and evidence of personal knowledge, to emerge from the hearing was that the receipt had been in the Southern District of New York before seizure, and the Government did not claim it to have been seized in the Eastern District of New York on either its inventories made at the time or those made after the fact.

Secondly, the trial court erred in not applying the ruling of the Southern District of New York to the seizure of the sales receipt regard of the district of seizure. The trial court clearly felt Judge Lasker's ruling

to be dispositive in that it took at least half a day's testimony on the location of seizure. However, the Southern and Eastern District "warrants" were identical for all practical purposes and the policy of the federal courts has been to avoid adjudications of the same seizures. DiBella v. United States, 369 U.S. 121 (1962). See also United States v. Lester, 21 F.R.D. 30 (1957). The policy of this court has been to attempt to avoid piecemeal litigation as to the validity of searches and seizures. In a case such as this, which involved seizure in New York half a million documents, upon allegations of crimes, none of which were claimed to involve Miss Reid, the prosecution in North Carolina -- more than a year later -- upon one sales receipt creates the piecemeal litigation, the the motions to quash in the districts of seizure.

Each of the factors set forth in United v. Lester, supra, when applied to this case requires that the deference be given to the New York courts. The North Carolina determination could affect only Miss Reid; a determination in either District Court in New York would be res judicata as to all parties. Applying the principles of DiBella v. United States, supra, the trial court erred by refusing to follow the Southern District ruling on the assumption that it did not apply to this portion of the search that ocurred in the Eastern Distract as well.

Another factor commanded the application of the Southern District of New York ruling; Miss Reid had said repeatedly that she would not be able to present full evidence if a hearing on the legality of the search was held in the Middle District of North Carolina, that logistical and monetary

infeasibility would prevent her from doing so as much of the evidence favorable to her was in the hands of the Government in New York. The trial court refused to order the disclosure of materials pursuant to Brady v. Maryland, 373 U.S. 83 (1963) upon repeated motion by Miss Reid. It held that the Government was only obligated to produce materials within the possession of the U.S. Attorney for that district. However, when it came time to produce evidence at that hearing, the Government's evidence was brought from New York -- selectively, even to the point of the FBI agent bringing certain pages of his report and not others. Given the multi-district nature of the case, the trial court's limitation was in direct violation of the "one-government" rule of Giglio v. United States, 405 U.S. 150 (1972). Even admissions by Assistant U.S. Attorneys in New

New York that the Government possessed evidence favorable to Miss Reid did not cause the trial court to demand anything more than a flat denial of Reid's specific requests, denying her a fair trial. United States v. Agurs, 426 U.S. 97 (1976).

The search "warrants" described seven different categories of seizure, which the Government claims justifies its seizure of a half million items, including evidence, pleadings, manuscripts, records, receipts, letters, clothing, money, jewelry, ledgers, file bibliographies and personal effects. From the face of the "warrants" it was evident that they provided the executing agents no guidance as to what was to be seized.

The warrant held constitutionally invalid as a "general warrant" by this Court in Stanford v. Texas, 379 U.S. 476

(1965), reh. den. 380 U.S. 926, directed agents with more specificity than do these "warrants." See also Go-Bart Importing Co. v. United States, 282 U.S. 344 (1931), Lo-Ji Sales Inc. v. New York, 442 U.S. 319 (1979), Ybarra v. Illinois, 444 U.S. 85 (1979).

Just as the hated writs of assistance of the British Crown, these "warrants" placed "the liberty of every man in the hands of every petty officer." Boyd v. United States, 116 U.S. 616, 625 (1886). The general nature of the "warrants" caused the seventy-five or more executing agents to rummage through the documents and materiel of the law firm in search of any evidence of any "crime" as the "crime" was not specified on the "warrants." Having held onto the materials seized for more than a year through proclaiming a grand jury investigation which did not exist, it appears that the Government

attempted to manufacture prosecution for any crime as justification for its huge expenditure in the search, which involved more than 41 clients in six states. Such a practice is specifically proscribed by the Fourth Amendment, the tyranny it represents being a major reason for the enactment of the Amendment. Entick v. Carrington, 19 Howells St. Tr. 1029 (1765), Boyd v. United States, supra.

In fact, after it could no longer continue the lie of an ongoing grand jury investigation, the Government then represented that it would return all materials seized in order to preclude further adverse court ruling. (A-11) At no time after the search did it claim that any materials seized were used in a crime, were the fruits of a crime, or were contraband. Indeed, had the Government not falsely claimed a

a grand jury investigation and been required to timely return the items seized, it would not have been able to use the knowledge gained by the first seizure to obtain the sales receipt and manufacture this prosecution. Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920).

The "warrants" authorized seizure of six categories of items belonging to something the FBI denominated the "PPC" and the books and records of Foxfire Enterprises, Inc. (a real estate management firm). At no time in this case did the Government claim that Amanda Reid, or her property, or the sales receipt, or the gun which she purchased, was associated with either one.

The results of the search and seizure proved the information upon which the "warrants" were sought to be incorrect. The agents did not even bother to seize the only property named in the

"warrants" which was at the sites of the search, that is, some of the books and records of Foxfire Enterprises, Inc. With that one exception, which they chose not to exercise, had the agents limited themselves to the categories identified on the face of the "warrant," they would have seized nothing.

In specific, they would not have seized the sales receipt in question here. The sales receipt was not listed individually or categorically as an item to be seized, nor was it within any of the categories of items to be seized. The "warrants" did not call for the seizure of Amanda's Reid's property. The United States Attorney admitted before the trial judge that there were no allegations having anything to do with Amanda Reid upon which the "warrant" was based. She was not alleged as participating in a crime upon which issuance of

the "warrant" was sought. In fact, no charges of any crime claimed for the "warrants" have ever been filed, no arrests made, no indictments issued. The sales receipt was seized as one of a half million documents carted away in a giant "fishing expedition."

> The requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer exexuting the warrant. Marron v. United States, 275 U.S. 192 (1927) (Emphasis added.)

In Marron, the Court specifically rejected the notion that seizure of items not described in the warrant was justified as incident to the execution of the search warrant, and held such a seizure in violation of the Fourth Amendment.

The sales receipt was not described in or even contemplated by the "warrant;"

it was taken in an unlawful exercise of discretion by federal agents who were provided no guidance by the "warrant" itself.

The search of the law firm's offices and seizure of materials therein directly violated the constitutional requirement of reasonableness. That the agents were required, in order to execute the "warrant," "to examine carefully and completely the contents of every document" and "to make ad-hoc, on-the-spot decisions as to which of these documents constitute evidence -- characteristics of execution of a general warrant specifically identified as constitutionally impermissible -- renders the search and seizure unconstitutional. Marron v. United States, supra; In Re Search Warrant Dated July 4, 1977, etc., 436 F. Supp. 689, 694. That this is what occurred is not a matter of dispute in

this case; it was admitted to Judge Nickerson of the Eastern District of New York on the day of the search and seizure, as the Assistant U.S. Attorney in charge described how the agents were seizing the materiel and admitted that he did not know what was being seized. (A-58 - 60) The search violated each and every aspect of the Second Circuit's requirements for law office searches -- which the trial court and the Fourth Circuit did not hear or consider. National City Trading Corp. v. United States, 635 F. 2d 1020 (1980). The trial court's failure to apply these standards enabled the federal agents to "get away with" a search which was clearly unlawful in the Circuit in which it occurred.

The trial court's refusal to hear and consider the rulings of the other districts which had considered and questioned or rejected the lawfulness of the

search, together with its refusal to consider the merits of Miss Reid's motion to suppress the evidence against her and dismiss the prosecution denied to her due process of law, and a fair trial. She was entitled to be heard on her claims that the Government had violated her Fourth Amendment rights in contriving its prosecution against her. Franks v. Delaware, supra; Irvin v. Dowd, 366 U.S. 717 (1961); Turner v. Louisiana, 379 U.S. 466 (1965); Groppi v. Wisconsin, 400 U.S. 505 (1971).

The entirety of this prosecution constitutes the fruits of the poisonous tree of an illegal search and seizure of evidence against Miss Reid. Nardone v. United States, 308 U.S. 338 (1939). Not only should the trial court's judgment of conviction, affirmed by the Court of Appeals, be reversed, but also the indictment against Miss Reid should be

dismissed as based upon illegally seized evidence. United States v. MacDonald, 435 U.S. 850 (1978).

CONCLUSION

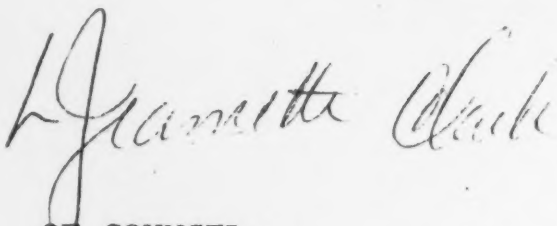
This conviction represents a violation of the precepts of federalism as well as the Fourth Amendment and due process of law. The Petitioner urges that the Constitution resume its rightful place in this matter -- of greater effect, as the Supreme Law of the Land, compelling reversal of any court's decision which does not ensure its full enforcement.

WHEREFORE, Petitioner prays that this Court grant this Petition for Writ of Certiorari to the Court of Appeals for the Fourth Circuit.

DATED: January 20, 1987

Respectfully submitted,

Decious, Reid & Assocs.
673 Oak Street, #11
San Francisco, CA 94117



OF COUNSEL:

L. Jeannette Clark

APPENDIX

Decision and Order of the
United States Court of Appeals
for the Fourth Circuit

No. 85-5550

United States of America,

Appellee,

versus

Amanda Reid,

Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Winston-Salem. Richard C. Erwin, District Judge. (CR-85-26-01-WS)

Argued July 15, 1986 Decided Oct. 8, 1986

Before PHILLIPS, SPROUSE and CHAPMAN,
Circuit Judges

Kathleen M. Paolo for Appellant; Kenneth W. McAllister, United States Attorney (Becky M. Strickland, CLA Paralegal Specialist on brief) for Appellee.

PER CURIAM:

Defendant Amanda Reid appeals her conviction for making a false statement to a federal firearms dealer in connection with the acquisition of a firearm, in violation of 18 U.S.C. § 922 (a)(6). Reid contends that the lower court's jury instructions constituted plain error, that the court erred by failing to dismiss the prosecution as the fruit of an unlawful search and seizure, that alleged governmental misconduct denied defendant a fair and impartial trial, that the lower court erred in refusing to allow Reid to present evidence that the case against her was a "demogogic prosecution manufactured by governmental misconduct," that 18 U.S.C. § 922 (a)(6) is unconstitutional as applied to Reid, and that the trial court committed various errors which denied her a fair and impartial trial. We

reject all of these contentions and affirm Reid's conviction.

I

Reid, an attorney licensed to practice law in California and New York, is a partner in the California law firm of Decious, Reid & Associates, and she is counsel to the New York City law firm of Daniel P. Foster, P.C. Reid and her parents visited Reid's aunt, Margaret Waugh, at Waugh's home in North Wilkesboro, North Carolina, in May 1981, for a family vacation. Reid testified that at the time of her visit, she was considering moving to North Carolina and taking the North Carolina bar exam. Except for this brief family visit, Reid had never lived or visited her aunt at this North Wilkesboro, North Carolina, address.

On May 7, 1981, Reid purchased a hand-

gun from McHargue Guns and Coins, Inc., a federally licensed firearms dealer located in Winston-Salem, North Carolina. Applicable federal law requires that when purchasing a firearm from a licensed dealer, the purchaser must answer, on ATF Form 4473, a number of questions, including place of residence. The law prohibits firearms dealers from selling guns to out-of-state residents. The seller is required to verify on the form that he saw identification from the purchaser. A North Carolina driver's license is normally used as the buyer's identification.

Phillip Parker, a McHargue Guns and Coins, Inc. sales clerk, testified that when he sold the handgun to Reid in May 1981, she filled out the required portion of the ATF Form and listed her address as "Box 96, North Wilkesboro, North Carolina

28659." Parker, who knew of the in-state residency requirement for the purchase of a firearm, saw as Reid's identification a pistol permit and an expired international student identification card.

The pistol permit is required under North Carolina law for the purchase of handguns. The Sheriff of the County in which the purchaser resides issues this permit. About two days before purchasing the gun, Reid had gone with her aunt to the Sheriff's Department in North Wilkesboro. Reid explained that she wanted to purchase a gun, and that she was living with her aunt on Bushy Mountain Road in North Wilkesboro. When asked for North Carolina identification, Reid responded that she did not have any because she had not been in the state long enough but that she was thinking of taking the bar exam

and staying in North Carolina "at that point in time." The Sheriff's Department issued Reid the gun permit.

Shortly after purchasing the gun, Reid returned to New York. In June 1981, she applied for admission to the New York bar. In response to a question on the application asking for "present address, full mailing address," Reid listed a Brooklyn, New York address. She also answered that she had been at this address since October of 1978. Reid did not list the North Wilkesboro, North Carolina, address in response to a question asking for a list of "every permanent and temporary residence you have ever had, including the present . . . since first entering college. . . ."

In February of 1984, based upon search warrants executed by the FBI,

searches in matters unrelated to the present case, were conducted simultaneously at various locations in the Eastern District of New York, including a branch office of the Foster firm at Apt. 1A, 1107 Carroll St., Brooklyn, New York, and one location in the Southern District, the main law office of the Foster firm located at 145 West 55th Street, Manhattan, New York. At one of these locations, Reid's copy of the ATF Form 4473 used to purchase the handgun in North Carolina was found and seized. The searches at all locations were based upon the same 40-page affidavit. The search warrants were issued by Judge Bramwell in the Eastern District of New York and Magistrate Gershon in the Southern District of New York based on probable cause found in this affidavit

The day before the searches, however,

on February 16, 1984, Kit Decious and Daniel Foster, members of the two law firms with which Reid was associated, appeared before Judge Nickerson of the Eastern District of New York in connection with a grand jury investigation. Two grand jury subpoenas duces tecum were issued to Decious and Foster ordering them to return the next day with the same records and property later seized under the affidavit and search warrants. Decious and Foster then told Judge Nickerson that they had no such records.[1/]

Pursuant to the warrants, agents seized a half million documents, most of which came from the Eastern District of New York locations. Only one box of documents was seized from the sole Southern District of New York location, 145 West 55th St., Manhattan.

Both the Southern District of New York and the Eastern District of New York district courts then confronted the issue of the lawfulness of the search and seizure. On April 23, 1984, Judge Lasker of the Southern District of New York, denied a Rule 41 (e) motion demanding return of the seized Southern District of New York materials on the basis that the movant, the Daniel Foster law firm, was unable to demonstrate any irreparable harm occasioned by the failure to return the seized documents.[2/] Accordingly, Judge Lasker denied the motion on the condition that the law firm be given access to the seized Southern District of New York documents.

On Nov. 16, 1984, the Southern District of New York Court, Judge Lasker again presiding, was again confronted with a Rule 41 (e) motion by the Foster firm

relating solely to the seizure of the Southern District of New York materials. Judge Lasker determined at this hearing that:

> I am prepared to rule with regard to the Southern District documents then that on representation of the government that the documents have been returned which are not in dispute, that copies which have not been made of them and are not being used, at least in the Eastern District of New York, for law inforcement purposes and so far as the United States Attorney, Mr. Gallagher, knows for law enforcement purposes anywhere, that the plaintiffs have been granted full relief; that except for the possibility that in spite of Mr. Gallagher's good faith representations he may be incorrect, I state for the record, that my denial of further relief is explicitly conditioned on the proposition that the plaintiffs not be deemed to have waived any right which it otherwise would have under Rule 41 (b) or any other right to move to suppress the use of any of the documents or copies of documents unless they are hereafter legally and properly seized for law enforcement purposes. All right.

Judge Nickerson of the Eastern District of New York also ruled on the law

firm's Rule 41 (e) motion dealing with the return of the seized Eastern District of New York materials. The Eastern District of New York court declined on June 7, 1985, to grant the motion on the basis that the law firm would suffer no irreparable harm, because the government had volunteered to return all the seized Eastern District of New York documents. The only possible harm resulting from the refusal to exercise jurisdiction which the court envisioned was the movants' inability to obtain a ruling at that time on the issue of the lawfulness of the search and seizure. The court asserted, however, that the policy of Rules 41 (e) and (f) "expressly favors that motions to suppress evidence be made in the trial court, so that all pretrial motions can be disposed of in a single court appearance."

Based upon her representations of residency made in the seized ATF Form 4473, Reid was indicted in the Middle District of North Carolina in Febrary 1985 for violation of 18 U.S.C. § 922 (a)(6) and § 924. She pled not guilty and made a number of pretrial motions including a Motion for Suppression of Treasury Form No. 4473 and a Motion to Dismiss Indictment. At a June 1985, suppression hearing, Chief Judge Ward of the Middle District of North Carolina considered whether he could rule invalid a search warrant signed by another federal district judge.

Based upon the evidence, Judge Ward found that Reid's gun receipt was seized in the Eastern District of New York and that therefore, the ruling of the court in the Southern District of New York was not involved.

Considering, then, only the validity of the warrants issued in the Eastern District of New York, he upheld their validity and denied the suppression motion.

Following the grant of three successive motions by Reid for continuances, Reid's jury trial began in July 1985 before Judge Erwin of the Middle District of North Carolina. Reid testified that when she listed the North Wilkesboro address as her residence on the ATF form, she considered that address to be a truthful statement of her residence at that time. Reid admitted that the only time, until the date of her indictment in February 1985, that she had been at the North Wilkesboro address was the May 1981 trip with her family. Yet, she still considered that to be her residence, as she "could go there at any time, I could go live with my aunt at any time,

I am welcome there at any time, her home is my home." At the New York bond hearing in connection with this case, Reid had listed the North Wilkesboro address as her residence, as this matter "had to do with North Carolina."

Reid was found guilty as charged and was sentenced to five years probation and ordered to pay a $2,500 fine and to return the gun. This appeal followed.

I (sic)

We consider first Reid's contention that the trial court's jury instructions contained plain error requiring reversal despite her conceded failure to object contemporaneously to the instructions as given.

The challenges go to a number of alleged errors, but only the principal

one warrants any discussion. This is the claim that the court failed adequately to define the mental state required to find the defendant guilty of an 18 U.S.C. § 922 (a)(6) violation and, more specifically, that the instructions given failed to explain to the jury her specific theory of defense - that if she honestly believed herself to be a North Carolina resident when she filled out the form, she could not be found guilty.

We disagree with this contention.

18 U.S.C. § 922 (a)(6) provides that it shall be unlawful

> for any person in connection with the acquisition or attempted acquisition of any firearm . . . from a licensed . . . dealer, . . . knowingly to make any false or fictitious oral or written statement . . . intended or likely to deceive such . . . dealer . . . with respect to any fact material to the lawfulness of the sale or other disposition of such firearm . . . under the provisions of [the applic-

able statutes of the United States].

Reid's contention is that the instructions given failed to relate her specific defense of a subjectively honest belief that the North Wilkesboro address was her residence to the statute's requirement that the "false statement" be "knowingly" made and be "intended" to deceive the dealer. Because this went to the critical specific intent requirement of the statute, she says, this error was "plain," requiring reversal.

There is no merit to this contention, particularly when assessed under the stringent plain error test, see United States v. McCaskill, 676 F.2d 995, 1002 (4th Cir. 1982).

The district judge first read to the jury the indictment which of course tracked the statutory language, including

the specific intent element as embodied in the critical "false," "knowingly," and "intended to deceive" language. He then reiterated this requirement in the course of describing the several elements which the jury must find to convict. Most critically, in elaborating later on the meaning of the key word "knowingly" in the context used, the court explained: "The word 'knowingly' as used in the phrase 'knowingly made a false statement' means that [sic] voluntarily and intentionally, and not because of mistake or accident." This directly followed the court's careful explanation that a person "may be a resident of one or more states."

These direct explications of the meaning of the critical terms defining the requisite mental state for conviction were capped by the court's emphasizing that this

statute requires proof of "specific intent," here that "the defendant knowingly did an act which the law forbids, purposely intending to violate the law," and a full explanation of the government's burden to prove all the statutory elements, including that of specific intent as so defined, beyond a reasonable doubt.

In the face of these specific and clear instructions on specific intent, as defined in the statute, Reid's real complaint is that the court did not go beyond and more directly relate her theory of "honest belief, even if technically mistaken," to the legal definition of "knowingly," which the court had given. But while the failure specifically to instruct on an evidentiarily-supported theory of defense may sometimes constitute reversible error, see, e.g., United States v. West,

666 F.2d 16, 20 (2d Cir. 1981), this does not of course mean that a court must give the exact or even approximate text of proffered instructions on such a theory by the defendant. The rule instead is simply that a theory of defense supported by evidence is adequately submitted to the jury when the instructions actually given subsume the theory in language sufficiently precise to allow its application by the jury to the facts in evidence and the controlling legal principles. See United States v. Miller, 658 F.2d 235, 237 (4th Cir. 1981).

Under that test, Reid's specific theory of defense - "honest belief, even if mistaken" - was fully contemplated by the court's instructions above excerpted. Most tellingly, the court specifically noted that one cannot be found "knowingly" to have done an act when it is done "because

of mistake or accident" (emphasis added). One practical test of the adequacy of instructions to lay a particular theory of defense before a jury is whether the instructions fairly support and make obviously relevant jury argument that seeks acceptance of the specific theory. That test is clearly met here. It is inconceivable that this jury was not fully aware that under the law as instructed by the court, they could not convict Reid if, in line with her defense, they entertained any reasonable doubt as to whether she acted under an honest, if mistaken, belief in this North Carolina residency.

Reid seeks further specific support for her challenge to the jury instructions in this court's opinion in United States v. Behenna, 552 F.2d 573 (4th Cir. 1977). Aside from the fact that the in-

structions in Behenna had been objected to and were therefore not reviewed under the stringent plain error standard, the case is readily distinguised.

In Behenna the specific vice found was the ambiguity of the instructions on specific intent as related to the defendant's evidence. Attempting to avoid a finding that he had falsely and "knowingly" misrepresented as his South Carolina "residence" a vacant lot, the defendant testified that he had intended at the time to make it his "residence" in the future. The court's instructions, erroneously in this court's view, misled the jury into concentrating unduly upon whether that was the defendant's specific intent as to his future residency rather than upon whether he had knowingly misrepresented his then present residence.

Behenna simply does not stand for the

proposition that a specific instruction on specific theories of defense related to the requisite state of mind under § 922(a)(6) is routinely required. The decision was a highly fact-specific one focussed upon ambiguity of particular instructions in relation to particular evidence; and it does not support Reid's challenge here.

We therefore conclude that there was not error, certainly not plain error, in the court's instructions on the specific intent required to convict here, nor in any other respect challenged.

III

We turn next to Reid's claim that the trial court erred by failing to dismiss the prosecution as the fruit of an unlawful search and seizure. She challenges the results of the suppression hearing in the Middle District of North Carolina

on a number of bases. Reid first contends that the lower court erred in finding that her gun receipt was seized in the Eastern District of New York. She argues that the receipt was, in fact, seized in the Southern District of New York and, therefore, Judge Lasker's November 16, 1984, ruling dealing with the Southern District of New York seizure, which, Reid claims, found the search and seizure to be unlawful, is applicable. She contends that the lower court here erred by failing to follow the Southern District of New York court's ruling in accordance with DiBella v. United States, 369 U.S. 121 (1962). See also United States v. Lester, 21 F.R.D. 30 (S.D.N.Y. 1957).

We disagree and affirm the lower court's ruling on this issue. Judge Ward's finding that the Reid gun receipt was seized in the Eastern District of New York

is subject to clearly erroneous review. Judge Ward took extensive evidence on this issue. Reid testified before the lower court that the receipt was stashed in a lower drawer of a file cabinet at 145 West 55th St. where she kept her personal effects, that she had last seen it there in December 1983, and that no one moved any of those materials from that location. Neil Herman, an FBI agent, was the case agent, custodian who took the final inventory of all documents seized during the searches. His testimony established that the items from the various search locations were never commingled. Herman could not produce the inventory from which the sales receipt was found, but he asserted that to his personal knowledge the document was recovered at the 1107 Carroll St., Brooklyn, address in the Eastern District of New York as part of a set of doc-

uments in a folder identified in writing by Reid. He also testified that the detailed inventory of the Southern District of New York materials made no reference whatsoever to Amanda Reid, to any of her documents, or to her gun receipt. We conclude that substantial evidence supports the Middle District of North Carolina's finding that the seizure occurred in the Eastern District of New York, and that this finding is not clearly erroneous.

Because we affirm the district court's finding that Reid's property was seized in the Eastern Distric of New York, we need not consider the effect of any search and seizure rulings in the Southern District of New York. We consider only the propriety of Judge Ward's rulings as they might be affected by rulings in the Eastern District of New York.

Reid next contends that "the trial court erred by refusing to consider the illegality of the New York 'warrants' on their face, the lack of probable cause for issuance of the 'warrants' and the illegality of the seizures as grounds for suppression of the evidence seized." This challenge relates to both of the issues addressed by Judge Ward at the suppression hearing: (1) whether alleged material misrepresentations in the affidavit destroyed probable cause, and (2) whether he could rule invalid a search warrant signed by another federal district judge, here a judge of the Eastern District of New York.

Judge Ward correctly took the position that unless defendant met the test set out in Franks v. Delaware, 438 U.S. 154 (1978), he had no authority in any event to rule invalid a warrant signed by

another federal district judge. Under Franks, Reid had to make a substantial preliminary showing that the statements made to the judge issuing the warrants, Judge Bramwell of the Eastern District of New York, were false, thus making the warrants lacking in probable cause. Judge Ward, therefore, asked for an offer of proof from Reid which would tend to establish the falsity of the statements in the affidavit upon which Judge Bramwell relied in issuing the warrants. After hearing Reid's offer of proof, Judge Ward concluded that those alleged misrepresentations affected only two paragraphs in the affidavit. Even eliminating these two contested paragraphs, the court ruled, there were still adequate grounds for issuance of the search warrant so that Reid had failed to make a prima facie showing of falsity under Franks.

We find no error in Judge Ward's conclusion that a substantial basis supported the Eastern District of New York Court's finding of probable cause for the issuance of the warrants. We therefore affirm his order refusing suppression.

Finally, Reid challenges the lower court's refusal to rehear the motion to suppress or to extend the date of trial to permit the questions regarding the alleged unlawfulness of the search and seizure to be fully resolved in the district of seizure before trial. We reject Reid's contention.

Reid's motions for rehearing and reargument were based upon an intervening June 26, 1985 ruling by Judge Nickerson in the Eastern District of New York. Reid contended that in this order Judge Nickerson had ordered the return of the seized

materials under Rule 41(e) and that this should be treated as an order of suppression under Rule 12, binding in her North Carolina prosecution and therefore precluding introduction of seized items in her trial.

Contrary to Reid's assertion, however, Judge Nickerson's June 26 ruling did not alter his earlier June 7, 1985 order. In that earlier ruling, the court had declined to exercise jurisdiction on the basis that the Foster law firm could not establish irreparable harm, as the government had volunteered to return the documents. At the June 26, 1985, hearing, Judge Nickerson merely inquired whether the documents had been returned, permitted the movants to pick up the documents at their convenience, and denied the law firm's motion to stay any further requirements that the firm turn over materials to a New York county grand jury

investigation.

Accordingly, because the Eastern District of New York Court's later ruling did not amend any previous order and certainly did not rule that the documents should be suppressed, the Middle District of North Carolina court did not err in refusing Reid's motions for rehearing and for reargument.

IV

Reid contends that in various ways prosecutorial misconduct denied her a fair and impartial trial. She cites six such incidents of alleged miscondict: (1) failure to produce Brady materials; (2) government misrepresentations to the courts in the Second and Fourth Circuits to avoid adverse rulings which would have precluded Reid's prosecution; (3) improper government conduct in moving to unseal the affidavit

in support of the New York search warrants and then releasing it to the press; (4) the government's refusal to accede to another continuance after Reid had been subpeonaed to appear before a grand jury in New York; (5) improper introduction of statements by Reid in violation of Rule 16 of the Federal Rules of Criminal Procedure; and (6) improper closing jury arguments by the government by innuendo and speculation as to Reid's bad or improper motive.

We have examined these claims of prosecutorial misconduct and have found them all to be without merit.

V

Finally, Reid contends that the court erred in refusing to let her present evidence that the case against her was a "demagogic prosecution maufactured by governmental misconduct"; that 18 U.S.C. § 922(a)

(6) is unconstitutional as applied to Reid; and that the district court committed numerous trial errors, including the failure to direct acquittal for insufficiency of evidence, and making "disparaging" remarks and engaging in other conduct that prejudiced her in the eyes of the jury.

We have examined all of these assignments of error and find none to have substance.

The conclusory contention of "demagogic prosecution" rests essentially on defendant's unsupported perception of an underlying sinister political motive for this prosecution.

The claim of unconstitutionality of the statute as applied to Reid is without merit. See Huddleston v. United States, 415 U.S. 814 (1974).

The evidence, though obviously conflicting and necessarily circumstantial as to intent, was quite sufficient to support a finding of guilt beyond a reasonable doubt on the critical issue of Reid's specific intent given the fleeting contact she had with the North Carolina "residence" she claimed, and her conflicting statements of residence in other contexts.

The charges of trial court conduct prejudicing the jury are frivolous.

AFFIRMED.

---

[1] When Judge Bramwell issued the search warrants he was apparently completely unaware of the Eastern District of New York's grand jury proceeding and he was not then informed about the grand jury subpoenas. Indeed, Judge Bramwell later noted that "If I had known that you were before Judge Nickerson, under those circumstances, I doubt I would have signed the search warrants."

UNITED STATES DISTRICT COURT for

THE MIDDLE DISTRICT OF NORTH CAROLINA

WINSTON-SALEM DIVISION

CR-85-26-01-WS

UNITED STATES OF AMERICA vs.

AMANDA REID

195 Adams Street, Brooklyn, NY

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date - October 7, 1985

WITH COUNSEL Louis C. Allen, III and Kathleen M. Paolo

There being a verdict of GUILTY, as charged in an indictment.

Defendant has been convicted as charged of the offense of knowingly making a false statement to a licensed firearms dealer; in violation of 18 U.S.C. § 922 (a)(6) and § 924(a), as charged in an indictment.

The court asked whether defendant has anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of twenty-four (24) months, and she is ordered to pay a fine of $2,500.00. The execution of the prision sentence only is suspended and the defendant is placed on

probation for a period of five (5) years from this date.

Special conditions of probation are: 1) That the defendant shall return the weapon which is the subject of this case on or before November 1, 1985, to the Bureau of Alcohol, Tobacco and Firearms in San Francisco, California; 2) That the fine be paid on or before October 21, 1985.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a

violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends:

U.S. District Judge, Richard C. Erwin

October 21, 1985

Georgia E. Taylor
Deputy Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

UNITED STATES OF AMERICA

vs. Criminal Action

AMANDA REID

No. Cr-85-26-01-WS

Winston-Salem, North Carolina

June 19, 1985

9:30 o'clock A. M.

APPEARANCES:

KENNETH W. McALLISTER, United States Attorney, appearing on behalf of the United States of America

LOUIS C. ALLEN, III, Attorney, and KATHLEEN PAOLO, Attorney, appearing on behalf of the Defendant Amanda Reid

MISS PAOLO: Well, we do have the direct testimony of Mr. McGahan who did review all of the documents and stated that it was not there. He had an opportunity to sit down in the room and go through all the material and he stated that he did not see that receipt.

The only material he was denied access to was the box from 145 West 55th Street.

It's very interesting, Your Honor, when this is the only litigation stemming from it, it seems it would be important enough to be listed on an inventory somewhere. None of these papers show any gun receipt.

THE COURT: That has all been explained by the evidence, at least to my satisfaction. There is no way to list a half million documents except to list

them by file and category, which was done.

I don't find anything wrong with the search, seizure, or anything else pertaining to the warrant. The preponderance of the evidence leads me to the conclusion that it was proper in every respect.

Consequently, your motion to suppress is denied and your motion to dismiss is denied.

Decision and order of the
United States Court of Appeals
for the Fourth Circuit

No. 85-5550

United States of America,

Appellee,

versus

Amanda Reid,

Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Winston-Salem. Richard C. Erwin, District Judge. (CR-85-26-01-WS)

Appellant's motion for leave to file its petition for rehearing out of time as well as petition for rehearing,

IT IS ORDERED that although the motion for leave to file out of time is granted, the petition for rehearing is denied.

Entered at the direction of Judge Phillips with the concurrence of Judge Sprouse and Judge Chapman.

For the Court,

John M. Greacen
Clerk

CONSTITUTION OF THE UNITED STATES

Article IV, Sec. 2, cl. 1

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

UNITED STATES CONSTITUTIONAL AMENDMENTS

U.S. Const. Amend. 2

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. Constitutional Amendment 4

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons of things to be seized.

U.S. Constitutional Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or

public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitutional Amendment 6

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have

compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Constitutional Amendment 10

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. Constitutional Amendment 14

Section 1. All persons born or naturalization in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES STATUTES

18 U.S.C. § 921(b)

(b) The Congress further hereby declares that the purpose of this title (18 U.S.C.S. §§ 921 et seq. and notes) is to cope with the conditions referred to in the foregoing subsection, and that it is not the purpose of this title (18 U.S.C.S. §§ 921 et seq. and notes) to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trap shooting, target shooting, personal protection, or any other lawful activity, and that this title (18 U.S.C.S. §§ 921 et seq. and notes) is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for

lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title (18 U.S.C.S. §§ 921 et seq. and notes).

Section 101 of Act Oct. 22, 1968, P.L. 90-618, Title I, 82 Stat. 1213, provided:

The Congress hereby declares that the purpose of this title is to provide support to Federal, State, and local law enforcement officials in their fight against crime and violence, and it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trapshooting, target shooting, personal protection, or any other lawful

activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes, or provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provision of this title.

18 U.S.C. § 922 (a)(6)

(a) It shall be unlawful--

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter [18 USCS §§ 921 et seq.].

18 U.S.C. § 924 (a)

(a) Whoever violates any provision of this chapter [18 USCS §§ 921 et seq.] or knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter [18 USCS §§ 921 et seq.] to be kept in the records of a person licensed under this chapter [18 USCS §§ 921 et seq.], or in applying for any license or exemption or relief from disability under the provisions of this chapter [18 USCS §§ 921 et seq.], shall be fined not more than $5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine.

FEDERAL RULES OF CRIMINAL PROCEDURE: (FRCP)

Rule 12. Pleadings and Motions before Trial; Defenses and Objections

(b) Pretrial motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution; or

(2) Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings); or

(3) Motions to suppress evidence; or

(4) Requests for discovery under Rule 16; or

(5) Requests for a severance of charges or defendants under Rule 14.

Rule 41. Search and Seizure

(e) Motion for return of property. A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property which was illegally seized. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial. If a motion for return of property is made or comes on for hearing in the district of trial after an indictment or information is filed, it shall be treated also as a motion to suppress under Rule 12.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CR-85-26-01-WS
	)	
AMANDA REID	)	

The Grand Jury charges:

On or about May 7, 1981, in the County of Forsyth, in the Middle District of North Carolina, AMANDA REID, in connection with the acquisition of a firearm from a licensed dealer in firearms, knowingly made a false and fictitious statement, likely to deceive such dealer, with respect to a material fact as to the lawfulness of the sale of such firearm, pursuant to Chapter 44, Title 18, United States Code; in that she certified on Department of the Treasury Form Number 4473 that her residence address was Box 96, North Wilkesboro,

North Carolina 28659, whereas, in truth and fact, as AMANDA REID then well knew, she did not reside anywhere within the State of North Carolina; in violation of Title 18, United States Code, Section 922(a)(6) and 924(a).

A TRUE BILL:

_____
FOREMAN

_____
UNITED STATES ATTORNEY

A True Copy

Teste:

J.P. Creekmore,
Clerk

By:

_____
Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re:

GRAND JURY SUBPOENA

Brooklyn, New York
February 16, 1984

B e f o r e:

HONORABLE EUGENE H. NICKERSON, U.S.D.J.

Appearances:

RAYMOND J. DEARIE, ESQ.
United States Attorney for the
Eastern District of New York

By: DAVID V. KIRBY, ESQ.
Asst. U.S. Attorney

DANIEL P. FOSTER, ESQ.

KIT CONELLY DECIOUS, ESQ.

THE COURT: If there is anything that remotely you think is related to any matter in the subpoena you have to

produce it.

MR. FOSTER: Yes.

THE COURT: If it's privileged you'll let me know. All right.

What is your schedule? . . .

If you have any records on Fox Fire (sic), you produce them and you should be able to produce them tomorrow afternoon.

All right?

MS. DECIOUS: All right.

Shall I set a time for that, your Honor?

THE COURT: Surely.

Why don't you come in at 1:45.

Is that all right? See me and then if you have any that are privileged -- otherwise give them to Mr. Kirby.

If you claim any of them are privileged I'll rule on it then. Okay?

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

In Re: MISC.

Grand Jury Subpoena

----------x

Brooklyn, New York
February 17, 1984
4:10 P.M.

B e f o r e :

HONORABLE EUGENE H. NICKERSON, U.S.D.J.

Appearances:

RAYMOND J. DEARIE, ESQ.
United States Attorney for the
Eastern District of New York

BY: DAVID KIRBY
Asst. U.S. Attorney

HARLEY I. LEWIN, ESQ.

Also present:

Ms. Kit Conelly Decious

THE COURT: Have they seized all the records of the law firm?

MR. KIRBY: Judge, there's a lot to search, as I understand, at the

premises. It's going to take a long time. The search started sometime after 10:00 o'clock this morning.

THE COURT: You don't know what's being seized?

MR. KIRBY: I don't know. Obviously, sir, I would hope only documents complying with the warrants are being seized.

. . . .As I understand, they have to look at documents to seize them. It would be a vast intrusion on the particularity requirement of a warrant not to look at the documents. So, they have to determine whether they comply with the warrant. At that point if they have some concern that the documents comply with the warrant but also may have some relationship to the law office, that is, may have some legal relevance of some sort, they will then separate those.

. . . .

THE COURT: When will you give them an opportunity to see what it is that's been seized? They ought to have that opportunity at an early point. . . . You have to give me a date now or time when they're going to see it.

MR. KIRBY: My only trouble with that is that I don't know when the search is going to finish.

. . . .

THE COURT: Give it to them Wednesday 9:30 a.m. so they can look at it. If there's anything you claim privileged other than what they say is sealed and want to give me, you'll make that determination and make the appropriate application . . . . Monday is a holiday. These other things that are plainly unrelated that she's drafting papers (sic), give her those Tuesday, all right?

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re:

"SEARCH WARRANTS" ORDER

Upon application of Kit Conelly Decious of the Law Firm of Daniel P. Foster, P.C., before me on this 21st day of February, 1984, it is ordered:

1. That litigation materials of the Law Firm of Daniel P. Foster, P.C., not having been produced pursuant to this Court's order of February 17, 1984, the Federal Brueau of Investigation is ordered to allow access to all materials seized on February 17, 1984, in order to retrieve the Firm's litigation materials;

2. The United States Attorney is to ascertain what medications were seized from the practice of Stuart L. Steinman, M.D. and his associates and is to return those items not seized pursuant to warrant.

3. The United States Attorney and the Federal Bureau of Investigation are to notify the Law Firm of Daniel P. Foster, P.C. if there is intention to re-enter the premises searched pursuant to warrant on February 17, 1984, including those of the Law Firm of Daniel P. Foster, P.C., and the offices of Stuart L. Steinman, M.D. such that those parties may make application to this Court for protective order if appropriate.

Dated: Brooklyn, New York
February 21, 1984

Eugene H. Nickerson
Judge, United States
District Court,
Eastern District

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION
CR-85-26-01-WS

- - - - - - - - - - - - - - - -

UNITED STATES OF AMERICA

vs. MOTIONS

AMANDA REID,

Defendant

- - - - - - - - - - - - - - - -

Greensboro, North Carolina
May 8, 1985 at 10:00 a.m.

THE HONORABLE FRANK W. BULLOCK, JR.,
PRESIDING

APPEARANCES

For the Government:
KENNETH W. McALLISTER, Esq.,
United States Attorney

For the Defendant:
LOUIS C. ALLEN, III, Esq.
KATHLEEN PAOLO, Esq.

MR. McALLISTER: Obviously, the question simply comes as to the validity of the search. Certainly if the search was no good, then we have no basis to proceed with the prosecution. We recognize that.

THE COURT: All right; fine. I did not understand you to say that... . All right. Assuming that Judge Nickerson grants the motion to quash or otherwise rules that the search in New York is illegal and you concede, Mr. McAllister, that that's the end of the case here.

MR. McALLISTER: We would file a motion with the Court to dismiss, request that the Court allow us to dismiss.

. . . .

THE COURT: All right; here's what I'm going to do. In view of no objection by the United States Attorney, I am going to continue this case pending a decision by the District Court in New York pursuant to

the motion which I understand is going to be heard by the end of May, and pending his ruling, and if he declines to hear it or it's not heard in May, we are not going to continue this thing again. I want something filed here, Mr. Allen, so that we don't have to go through this again so that within two weeks of today, by the 22nd of May, it is going to be -- I am going to assume that you no longer want to make it and it's deemed waived, and in filing that motion, you can also move that the ruling on it be held in abeyance pending the decision from the District Court in New York, but I want something here in Court filed on the motion to suppress if one is going to be filed.

MR. ALLEN: Yes, Your Honor.

THE COURT: All right. All right; Mr. Allen and Mr. McAllister, I am going to continue the case. I understand from

the Defendant,, Mr. Allen, that you are making the motion that you are not raising any issued under the Speedy Trial Act, and you are consenting and agreeing to the deletion of this time from the time provisions in the Speedy Trial Act.

MR. ALLEN: That's correct, Your Honor.

Supreme Court, U.S.
FILED
APR 9 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1211

In the Supreme Court of the United States

OCTOBER TERM, 1986

AMANDA REID, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Solicitor General
WILLIAM F. WELD
Assistant Attorney General
DEBORAH WATSON
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTIONS PRESENTED

1. Whether 18 U.S.C. 922(a)(6), which prohibits the making of a false statement of material fact in connection with the purchase of a firearm, is unconstitutional as applied to petitioner.

2. Whether evidence seized in a search of premises in New York should have been suppressed in petitioner's trial.

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In the Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-1211

AMANDA REID, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A33a) is reported at 803 F.2d 714 (Table).

JURISDICTION

The judgment of the court of appeals was entered on October 8, 1986, and a petition for rehearing was denied on November 21, 1986 (Pet. App. A41-A41a). The petition for a writ of certiorari was filed on January 20, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District for the Middle District of North Carolina, petitioner was convicted of making a false statement in connection with the acquisition of a firearm, in violation of 18 U.S.C. 922(a)(6). She was sentenced to five years' probation and a $2,500 fine.

1. The evidence at trial, the sufficiency of which is not in dispute, is set out in the opinion of the court of appeals (Pet. App. A3-A6, A13-A14). It showed that petitioner, an attorney, is a partner in the California law firm of Decious, Reid and Associates and is counsel to the New York City law firm of Daniel P. Foster, P.C. In May 1981, petitioner and her parents visited petitioner's aunt at the latter's home in North Wilkesboro, North Carolina. Petitioner had never lived in North Wilkesboro and, with the exception of this brief family visit, had never visited her aunt there. On May 7, 1981, petitioner purchased a handgun from a federally licensed firearms dealer in Winston-Salem, North Carolina. Federal law prohibits a dealer from selling firearms to a person who is not a resident of the state in which the dealer resides. 18 U.S.C. 922(a)(5). On Form 4473, a Bureau of Alcohol, Tobacco and Firearms form that the purchaser is required by law to fill out (*Huddleston* v. *United States*, 415 U.S. 814, 816 (1974)), petitioner listed as her address the address of her aunt in North Wilkesboro. For identification, petitioner furnished a pistol permit, which is required by North Carolina law for the purchase of a handgun, and an expired international student identification card. Petitioner had acquired the pistol permit two days earlier from the County Sheriff's Department in North Wilkesboro. At that time, petitioner told the Sheriff's Department that she was living with her aunt in North Wilkesboro. She explained her lack of any North Carolina identification on the ground that she had not been in the State long enough to acquire identification. She stated, however, that she was thinking of taking the bar examination and staying in North Carolina.

Shortly after purchasing the handgun, petitioner returned to New York. In June 1981, she applied for admission to the New York bar. On her bar application, petitioner stated that her address was Brooklyn, New York,

and that she had resided there since October 1978. Petitioner did not list the North Wilkesboro address in response to a question asking for a list of every permanent and temporary residence she had had since entering college.

Petitioner testified at trial that in listing the North Wilkesboro address on the ATF form, she considered that address to be a truthful statement of her residence at that time. Although she had only been at the North Wilkesboro address on the one occasion, she stated that she considered it to be her residence because "[I] could go there at any time, I could go live with my aunt at any time, I am welcome there at any time, her home is my home." Pet. App. A13-A14.

2. Petitioner's sales receipt for the purchase of the handgun in North Carolina was discovered during the search of an office of the Foster law firm at Apartment 1A, 1107 Carroll Street, in Brooklyn, New York. That address was one of five locations searched by the FBI, pursuant to warrants, on February 17, 1984.

The warrants were issued on the basis of an affidavit prepared by FBI Agent Neil Herman (App. 6-46).[1] Agent Herman's affidavit recited that the Provisional Party of Communists (PPC) operated out of three buildings located at 1107, 1111, and 1115 Carroll Street in Brooklyn (App. 7, 9-11, 20). The affidavit then set forth detailed information about the premises and the PPC that was obtained from several former members of the PPC, Carroll Street residents, and other sources as a result of an extensive investigation by the Joint Terrorist Task Force (App. 9, 19-20, 22, 25-27, 29, 33, 38).

The affidavit stated that the PPC was a revolutionary communist party founded in 1971 whose goal was the overthrow of the United States government by military

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[1] "App." refers to the Supplemental Appendix filed by the government in the court of appeals.

force (App. 10-11, 22, 25-26, 28-29, 33-34). Numerous "front organizations," mostly unions, were run and controlled from the PPC's national office, which was located in Apartment 2A at 1107 Carroll Street (App. 12-13, 22). Directly below the national office, in Apartment 1A, was the law firm of Daniel Foster, a PPC member (App. 13). The law firm was controlled by the PPC and staffed and run by PPC members (*ibid.*). Apartment 1A also housed the office of Gino Parenti, the leader of the PPC (App. 13-14). All PPC operations were conducted out of the national office and from Foster's law firm (App. 13). One of the front organizations used by the PPC was "Foxfire Enterprises, Inc.," which owned and operated the three buildings at 1107, 1111, and 1115 Carroll Street (App. 12-13). One of the PPC's "safe houses" was a penthouse apartment located at 145 West 55th Street in Manhattan (App. 17).

The affidavit recited that the scheduled date for the PPC's planned coup was February 19, 1984 (App. 10, 20, 25). The coup was to be undertaken by the "military fraction" of the PPC and by means of a general strike on the east and west coasts by unions under PPC control (*ibid.*). The PPC anticipated that it would take three days of fighting to complete the coup (App. 19). The "military fraction" of the PPC conducted military drills, and its members received military training (App. 11-12, 21-22). The affidavit recited that within the preceding 18 months, more than 100 firearms—including submachine guns, assault rifles, and military style M-1 carbines—had been seen in Apartment 2A at 1107 Carroll Street, and that within the preceding five days, hand grenades and numerous other firearms and ammunition had been seen in Parenti's apartment (App. 15, 18-19, 21, 27, 29). A PPC guard kept a 24-hour "lookout" from the PPC's second story window at 1107 Carroll Street, and during "alerts," armed PPC members were frequently seen at the Carroll

Street location (App. 14-15, 28, 41). The affidavit further recited that records and files of the "military fraction" were maintained in Foster's law office at Apartment 1A, 1107 Carroll Street, and that other PPC files were to be found throughout Apartment 2A (App. 13-14).

Finally, the affidavit stated that on February 16, 1984, grand jury subpoenas had been served on Daniel Foster and Kathryn Conelly Decious to produce certain documents (App. 42). Decious and Foster appeared before Judge Eugene Nickerson of the United States District Court for the Eastern District of New York that same day to contest the validity of the subpoenas. They indicated at that time that they did not have the requested records or any knowledge of them (App. 42-43).

On the basis of Agent Herman's affidavit, Judge Henry Bramwell of the United States District Court for the Eastern District of New York issued warrants on the evening of February 16, 1984, authorizing the search of the Carroll Street buildings and the penthouse apartment in Manhattan (App. 1-5A). The search warrant for Apartment 1A at 1107 Carroll Street authorized the officers to search for, inter alia, "records relating to the purchase, storage and disposal of weapons, ammunition and explosives" (App. 2).[2] During the search of Apartment 1A,

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[2] The search warrant for Apartment 1A, 1107 Carroll Street, authorized a search for (App. 2):

1. Weapons (rifles, handguns and machineguns) and other military equipment including uniforms;

2. Explosives;

3. All records of the Provisional Party of Communists (PPC) relating to the purchase, storage, location and disposal of weapons, ammunition and explosives;

4. All books, documents and records outlining the PPC's plans for an armed insurrection against the lawful authority of the United States Government;

agents found the sales receipt for the firearm petitioner had purchased in North Carolina (App. 88, 98, 164-168). All the items seized during the several searches were taken to the FBI office in the Southern District of New York, where they were inventoried and stored under lock and key (App. 75, 107). Thereafter, pursuant to court order, the government made available to Daniel Foster for inspection and copying all the material that had been seized from his Carroll Street law office (App. 267-270).

3. Following the searches, Foster filed motions in the United States District Court for the Eastern District of New York to quash the search warrants and for return of property (App. 258, 290-291). Following a hearing on March 7, 1984 (App. 256-300), the district court denied the motion to quash, ruling that it was moot because the warrants had been executed and returned and noting that a motion to suppress could be filed if criminal charges were brought (App. 258, 283, 286-288).[3]

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5. All records relating to planned terrorist activities;

6. All records of the "Military Fraction" of the PPC including, but not limited to, records detailing planned military activities directed against the lawful authority of the United States Government, records detailing planned terrorist activities, records concerning the location of "Military Fraction" headquarters, records relating to the location of weapons, ammunition and explosives, records relating to the purchase, storage and disposal of weapons, ammunition and explosives, records relating to the identity of those individuals making up the "Military Fraction" of the PPC and records relating to the system of communications among and between the different locations of the "Military Fraction" of the PPC; and

7. The books and records of Foxfire Enterprises, Inc.

[3] During the March 7 hearing before Judge Bramwell, Foster complained that at the time the government sought the search warrants from Judge Bramwell, the question of the validity of grand jury subpoenas issued on February 16 for some of the same material was pending before Judge Nickerson (App. 259-260, 264-265). Judge Bramwell

Thereafter, Foster filed several motions in the United States District Court for the Southern District of New York, including a motion to quash the search warrant executed at 145 West 55th Street and a motion pursuant to Fed. R. Crim. P. 41(e) for suppression and return of the items seized at that address. The district court denied the motions on April 23, 1984 (App. 254-255). With respect to the Rule 41(e) motion, the court ruled that given Foster's right of access to the seized material, he had failed to show that he would be irreparably harmed if the seized material was not returned (App. 255, citing *Standard Drywall, Inc. v. United States*, 668 F.2d 156 (2d Cir.), cert. denied, 456 U.S. 927 (1982)).

In September 1984, Foster filed a further motion in the Southern District of New York for return of the material seized from the Carroll Street buildings and 145 West 55th Street. At the November 16, 1984, hearing on that motion, the government informed the court that it had returned to Foster all of the material seized from the West 55th Street location (App. 238-242). Because that was the only material seized in the Southern District of New York (App. 241-242), the court ruled that Foster had been granted full relief with respect to documents seized in the Southern District (App. 242-243). The court further stated: "[M]y denial of further relief is explicitly conditioned on the proposition that the plaintiff not be deemed to have waived any rights which it would otherwise have

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commented that had he known that the matter was pending before Judge Nickerson, he doubted that he would have signed the search warrants (App. 260, 265). The attorney for the government informed Judge Bramwell that he had spoken to Judge Nickerson on the evening of February 16 and advised him that the government was applying for several search warrants for material that included some of the subject matter of the subpoenas whose validity was to be considered by Judge Nickerson. The attorney for the government further stated that Judge Nickerson had suggested that the government apply to Judge Bramwell for the warrants because Judge Bramwell lived closer to the courthouse (App. 265-266).

under Rule 41 B [*sic*], or any other rights, to move to suppress the use of any such documents or copies of documents unless they are hereafter legally and properly seized for law enforcement purposes" (*ibid.*). In a subsequent written order, the court ruled that insofar as Foster's motion for return of property pertained to material seized in the Eastern District of New York (that is, from the Carroll Street buildings), Rule 41(e) required that the motion be filed in the Eastern District (App. 233-234).

Foster then filed a motion in the Eastern District for return of the Carroll Street property and to quash the search warrants that had been executed in the Eastern District. The district court denied those motions in an order dated June 7, 1985 (App. 229-232). The government represented to the court that it intended voluntarily to return all the property seized in the Eastern District (App. 229, 230). The government also informed the court that criminal charges were pending against petitioner in federal district court in North Carolina and that the government might seek to introduce at that trial certain evidence that had been seized during the Carroll Street search (App. 231). The court declined to exercise its jurisdiction to pass on the Rule 41(e) motion, noting that the Foster firm would suffer no continuing injury because the government intended to return the property (App. 230) and that it would be inappropriate for the court to rule on the admissibility of any of the evidence that might be offered at a future trial in another district (App. 230-231).

4. Following her indictment on the instant charges, petitioner moved to suppress the sales receipt on the grounds that the search warrants were invalid as general warrants; that the warrants were not supported by probable cause; that the seizure of the sales receipt was outside the scope of the warrants; and that the search was conducted in an unlawful manner. At the hearing on these claims (App. 47-200), the district court expressed the view that

unless petitioner met the test set out in *Franks* v. *Delaware*, 438 U.S. 154 (1978), by establishing that the affiant knowingly and intentionally included in the affidavit false statements that were necessary to the finding of probable cause, he had no authority to invalidate a warrant issued by another federal district judge (App. 53). Petitioner argued that she met the *Franks* standard because the source of the information recited in paragraphs 18 and 25 of the search warrant affidavit was material that had been suppressed during earlier state court proceedings (App. 54-55). The district court found that even absent the information recited in those paragraphs, there was an "abundance" of probable cause (App. 57, 60-61).

Petitioner also argued that the search warrants had been improperly issued because, when it sought the warrants from Judge Bramwell, the government did not advise him that a challenge to the validity of grand jury subpoenas seeking the same material was pending before Judge Nickerson (App. 50-51, 54). Petitioner relied (App. 52) on Judge Bramwell's statement that he doubted that he would have issued the warrants had he known of the matter pending before Judge Nickerson. The district court noted that Judge Bramwell's statement merely reflected a hesitancy to involve himself in a case being handled by another judge, and it concluded that whether or not Judge Bramwell would have issued the search warrants had he known that a related matter was pending before Judge Nickerson had no bearing on the validity of the search warrants (App. 61).

Finally, petitioner argued that the sales receipt for petitioner's firearm had been seized from the building located on West 55th Street in the Southern District of New York and that District Judge Lasker on November 16, 1984, had suppressed all the material that had been seized in that district (App. 62-63). The government responded that

Judge Lasker had issued no order suppressing evidence seized in the Southern District of New York, and that in any event the receipt had been seized from 1107 Carroll Street, which was located in the Eastern District of New York (App. 63-64). After a hearing on the latter issue (App. 68-191), the court found that the receipt had been seized at 1107 Carroll Street (App. 194-196). The court then denied petitioner's motion to suppress and to dismiss the indictment, stating: "I don't find anything wrong with the search, seizure, or anything else pertaining to the warrant. The preponderance of the evidence leads me to the conclusion that it was proper in every respect." App. 196.

5. The court of appeals affirmed petitioner's conviction (Pet. App. A1-A33). The court found the evidence "quite sufficient to support a finding of guilt beyond a reasonable doubt on the critical issue of [petitioner's] specific intent given the fleeting contact she had with the North Carolina 'residence' she claimed, and her conflicting statements of residence in other contexts" (*id.* at A33). The court also summarily rejected as "without merit" petitioner's claim that 18 U.S.C. 922(a)(6) was unconstitutional as applied to her (Pet. App. A32). Finally, the court of appeals sustained the district court's refusal to suppress the sales receipt. It found (1) "no error in [the district court's] conclusion that a substantial basis supported the Eastern District of New York Court's finding of probable cause for the issuance of the warrants" (Pet. App. A28), and (2) that petitioner had failed to show that Agent Hansen's affidavit contained knowingly false statements that were necessary to the finding of probable cause (*id.* at A27). In this regard, the court of appeals found substantial evidence to support the district court's finding that the seizure of the receipt occurred in the Eastern District of New York, and it therefore declined to consider the effect of any rulings by the District Court for the Southern District of New York. *Id.* at A23-A25.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of another court of appeals. Review by this Court therefore is not warranted.

1. Petitioner first contends (Pet. 8-21) that 18 U.S.C. 922(a)(6) is unconstitutional as applied because her purchase of a firearm represented a purely "local transaction" in which the federal government had no legitimate interest. This claim is without merit.

a. The Gun Control Act of 1968 was passed by Congress in response to concerns over the widespread traffic in firearms and their easy availability to persons whose possession of firearms was contrary to the public interest. The primary purpose of the Act was "to curb crime by keeping 'firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency.' " *Huddleston* v. *United States*, 415 U.S. 814, 824 (1974) (quoting S. Rep. 1501, 90th Cong., 2d Sess. 22 (1968)). Section 922(a)(6) was enacted as a means of documenting firearms transactions. As this Court explained in *Huddleston*, 415 U.S. at 825:

> Information drawn from records kept by dealers was a prime guarantee of the Act's effectiveness in keeping "these lethal weapons out of the hands of criminals, drug addicts, mentally disordered persons, juveniles, and other persons whose possession of them is too high a price in danger to us all to allow." 114 Cong. Rec. 13219 (1968) (remarks of Sen. Tydings). Thus, any false statement with respect to the eligibility of a person to obtain a firearm from a licensed dealer was made subject to a criminal penalty.

Given Congress's power under the Commerce Clause to regulate sales by firearms dealers, Congress plainly has the

power to impose criminal sanctions on a person who makes a false statement of material fact to a firearms dealer. Such regulation of private transactions affecting commerce does not impermissibly interfere with the powers reserved to the states by the Tenth Amendment. *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 283-293 (1981).[4]

b. Petitioner contends (Pet. 10-11, 18-21) that the Gun Control Act constitutes an impermissible intrusion into state police power in another respect as well. Her argument is as follows: North Carolina law provides that a county sheriff may issue a pistol permit to residents of the county. The Sheriff of Wilkes County issued her a permit, thus determining that petitioner had sufficient local ties to qualify as a resident of that county. Accordingly, petitioner's federal prosecution for making a false statement concerning her residence in connection with the acquisition of a firearm interfered with the State's right to define "residency." This claim is frivolous.

Section 922(a)(6) makes it a crime for anyone knowingly to make any false statement that is intended or likely to deceive a firearms dealer with respect to any fact material to the lawfulness of the sale of a firearm. Section 922(b)(3)

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[4] Contrary to petitioner's contention (Pet. 16-18), application of the federal Gun Control Act in these circumstances likewise does not violate the Second Amendment. It is settled that the Second Amendment is not an absolute bar to congressional regulation of the use and possession of firearms; it protects use or possession that "has some reasonable relationship to the preservation or efficiency of a well regulated militia." *United States* v. *Miller*, 307 U.S. 174, 178 (1939); see also *Lewis* v. *United States*, 445 U.S. 55, 65 n. 8 (1980). Petitioner can make no such claim here. Moreover, petitioner was not convicted of keeping and bearing arms. She was convicted of making a false statement in connection with her acquisition of a firearm—activity that Congress has proscribed as an incidental part of a comprehensive statutory scheme for curbing the illegal possession and transfer of firearms.

makes it unlawful for a dealer to sell a firearm to any person who he believes or has reasonable cause to believe does not reside in the state in which the dealer's business is located. The jury found that at the time petitioner purchased the firearm in question, she falsely stated that she resided at her aunt's address in North Wilkesboro, North Carolina. Given the prohibition in Section 922(b)(3) against sales to nonresidents, petitioner's false statement was unquestionably material.

Nothing in Section 922(a)(6) conflicts with North Carolina law on the same subject. The applicable state statutes make it unlawful for a dealer to sell a pistol to a person without a permit and authorize the county sheriff to issue a permit to a resident of the county. N.C. Gen. Stat. §§ 14-402 to 14-404 (1986). Thus, North Carolina law, like federal law, requires that a permit for the sort of firearm petitioner purchased be issued only to a resident of the State. That the Wilkes County Sheriff issued petitioner a permit upon her representation that she intended to remain in that county in no way established that petitioner in fact was a resident of North Carolina; if anything, it suggests that the Sheriff erroneously issued petitioner a permit. Indeed, petitioner fails to cite any definition of "resident" under North Carolina law by which she could conceivably qualify as a resident of North Carolina. In any event, Congress has full power to regulate matters affecting commerce in firearms. Under the Supremacy Clause, the laws Congress enacts on that subject—including those at issue in this case that prescribe the definition of residence and establish procedures for ascertaining residence—are controlling, 'any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI, Cl. 2.[5]

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[5] Petitioner's reliance (Pet. 15-16) on *United States* v. *Behenna*, 552 F.2d 573 (4th Cir. 1977), is misplaced. First, as the court of appeals noted in the instant case (Pet. App. A20-A21), the defendant in

2. Petitioner's various challenges to the district court's denial of her motion to suppress the sales receipt (see Pet. 22-46) are also without merit.

a. Contrary to petitioner's contention (Pet. 23-24), the record shows that the district court conducted an extensive hearing on petitioner's motion to suppress (App. 47-200), after which it ruled that the warrant and ensuing search were proper in every respect (App. 194-196). Petitioner cites nothing to support her assertion that she was foreclosed from introducing evidence bearing on her motion to suppress. To be sure, the district court expressed the erroneous view that under *Franks* v. *Delaware*, it had no authority, in the absence of a showing that the affidavit contained knowing misrepresentations necessary to the finding of probable cause, to invalidate a warrant issued by another federal district judge (App. 53). However, petitioner did not take issue with the court's statement to that effect. Instead, she maintained that she could make a showing that satisfied the *Franks* v. *Delaware* standard that the district court invoked (App. 53-62).[6]

In any event, the district court's misapprehension was of no moment, because the court carefully scrutinized the warrant and the ensuing search and found them to be proper in every respect. The record fully supports the district court's conclusion in that regard. The detailed 40-page affidavit of FBI Agent Herman indisputably pro-

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Behenna objected to the jury instructions regarding his intent with respect to residence; petitioner did not do so. Second, as the court below further noted (Pet. App. A21-A22), the decision in *Behenna* was "highly fact-specific" and "focused upon ambiguity of particular instructions in relation to particular evidence" regarding the defendant's future residence. In any event, the distinctions drawn by the court below between this case and its prior decision in *Behenna* present no issue warranting review by this Court.

[6] Petitioner likewise did not urge reversal on this particular ground in the court of appeals (see Appellant's Br. 10-20), and she mentions the point only in passing here (see Pet. 30).

vided the requisite probable cause for issuance of a warrant, even without the two paragraphs that petitioner challenged as false. Indeed, petitioner does not contend otherwise. As the district court observed at the suppression hearing, any judicial officer who did not issue a warrant when presented such an affidavit "would be derelict in [his] duty" (App. 61). Moreover, because the executing officers were, at the very least, entirely justified in relying on the warrant issued by a federal district judge, petitioner would not be entitled to suppression of the sales receipt even if the courts below had concluded that the affidavit did not provide sufficient probable cause to support the warrant. See *United States* v. *Leon*, 468 U.S. 897 (1984).

b. Nor is there any merit to petitioner's argument (Pet. 37-43) that the warrant was unconstitutionally overbroad because it provided no guidance to the agents as to what was to be seized and because the agents had to examine the contents of every document in order to determine whether it was within the scope of the warrant. The warrant made perfectly clear what items were subject to search and seizure. It authorized the search for guns and ammunition; records pertaining to the purchase, storage, location, and disposal of those weapons; records concerning PPC's terrorist activities and its plans for an armed insurrection against the United States; and the records of Foxfire Enterprises. The fact that the searching agents had to examine numerous documents at 1107 Carroll Street in order to determine which documents fell within the scope of the warrant does not establish that the warrant was overbroad. In document searches of the nature involved here, a cursory examination of innocuous documents is inevitable and entirely proper. *Andresen* v. *Maryland*, 427 U.S. 463, 482 n.11 (1976).

c. Petitioner's related claim (Pet. 41) that the sales receipt was outside the scope of the warrant because it "was not listed individually or categorically as an item to

be seized" is wholly insubstantial. The warrant authorized the search for "records relating to the purchase, storage and disposal of weapons" (App. 2). The fact that petitioner's name was not specifically mentioned in the warrant is irrelevant.[7]

d. Finally, there is no merit to petitioner's contention (Pet. 33-35) that the district court should have suppressed the receipt and dismissed the indictment on the basis of the November 16, 1984, order by Judge Lasker in the Southern District of New York. Petitioner characterizes that order—which is quoted in relevant part in the court of appeals' opinion (Pet. App. A10)—as one suppressing all items seized in the Southern District. That characterization is simply erroneous. In context, it is clear that Judge Lasker was not ruling on the legality of the search or suppressing any evidence seized in his district. Indeed, Judge Lasker never considered any evidence concerning the

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[7] Petitioner's suggestion (Pet. 24-29) that the government acted improperly or that the warrant was invalid because the grand jury one day earlier had issued subpoenas for some of the same material also is insubstantial. Contrary to petitioner's intimation (Pet. 25-26), the pendency before Judge Nickerson of a challenge to the subpoenas was not hidden from Judge Bramwell, who issued the search warrant. That fact was recited in Agent Hansen's affidavit that was submitted to Judge Bramwell in support of the warrant application (App. 42-43). Furthermore, Judge Bramwell's comment that he might not have issued the search warrant if he had known that the matter was pending before Judge Nickerson merely reflected a reluctance to interfere; it did not imply that the search warrant should not have been issued or that the government had acted improperly (App. 61, 265-266). Finally, as explained in the affidavit (App. 42-43) and by the government during the March 7, 1984, hearing before Judge Bramwell (App. 260), there were grounds to believe that Foster and Decious had made misrepresentations to Judge Nickerson when they stated in contesting the subpoenas that they did not have any of the records in question. Because there was probable cause to believe that the PPC planned violent activity on February 19, 1984 (App. 10, 20, 25), circumstances plainly justified the government's seeking a search warrant to be executed on February 17, 1984.

search. And in the November 16 order, he in fact denied Foster's Rule 41(e) motion for return of the property that had been seized from 145 West 55th Street because the government had returned that property to Foster (App. 233-234, 238-243). In so doing, Judge Lasker merely noted that his order did not foreclose Foster (or, presumably, petitioner) from later challenging the legality of the search in any subsequent criminal proceeding. Petitioner was afforded an opportunity to do precisely that in her prosecution below.

Furthermore, as the district court found, the sales receipt was not seized in the Southern District of New York, but from 1107 Carroll Street in the Eastern District of New York (App. 194-196). The court of appeals held that the district court's finding on this point was supported by substantial evidence, which it recited in considerable detail (Pet. App. A23-A25). That concurrent factual determination by the courts below is not clearly erroneous and does not warrant review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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